

MONTGOMERY COUNTY, STATE OF MARYLAND

DAN LIEBERMAN :
8315 North Brook Lane : **COMMISSION ON COMMON**
Bethesda, Maryland 20814 : **OWNERSHIP COMMUNITIES**

Complainant : **CASE NO. 25-06**

vs.

THE WHITEHALL CONDOMINIUM : **Panel Hearing Date: December 13, 2006**
4977 Battery Lane : **Decision Issued: March 7, 2007**
Bethesda, Maryland 20814 :

Respondent :

Panel Chair Memorandum By: Corinne G. Rosen, Esq.

MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on December 13, 2006, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines, and orders as follows:

BACKGROUND

This is a complaint filed by a unit owner of a condominium on March 7, 2006, against the Condominium. The Complainant claims that the Condominium's Board of Directors does not have the legal authority under its governing documents or Section 11-125(e) of the Maryland Condominium Act to mandate that condominium unit owners

install ground fault interruptors (hereinafter referred to as “GFI”) in the kitchens located inside each individual condominium unit.

Complainant claims that installation of GFI in individual units does not provide safety to the public outside of the individual unit, does not protect the Condominium common property, does not prevent damage to other portions of the condominium, and does not affect the condominium’s common wiring. Complainant contends that the decision by a unit owner to install GFI should be voluntary, not mandated by the Board of Directors.

Respondent Condominium claims that it has the legal authority to mandate that unit owners install GFI in the individual units because such installation is reasonably necessary for public safety and to prevent possible fires that could spread to other units and to the common elements. The Condominium claims that the legal authority for its action requiring unit owners to install GFI is contained in Section 11-125(b) of the Maryland Condominium Act and in its Bylaws.

FINDINGS OF FACT

1. The Complainant is the owner of a unit in The Whitehall Condominium.
2. The Respondent Whitehall Condominium is a condominium created under the Maryland Condominium Act consisting of 301 townhouse units and apartment

units. The apartment units are in high rise buildings that are connected to one another.

3. On July 29, 2005, an electrical fire occurred in one of the townhouses located in the townhouse section of the condominium.
4. The Condominium subsequently caused Kolb Electric, Inc., to investigate the cause of the fire on its behalf.
5. The Condominium's investigation was performed by a licensed master electrician from Kolb Electric, Inc. The Respondent's property manager, Michael Modesitt, testified that no written report was prepared by Kolb Electric, Inc. concerning the cause of the fire or recommendations to the Condominium concerning the installation of GFI in kitchens, bathrooms, or elsewhere within condominium units generally.
6. According to the Minutes of the September 12, 2005 Meeting of the Respondent Condominium's Board of Directors (Respondent's Exhibit 1) and the testimony of Mr. Modesitt, Kolb Electric, Inc.'s master electrician made an oral determination based on his investigation that the fire in the townhouse was caused when a crimped wire in a newly installed exterior light fixture came into contact with the metal surface of the light fixture, creating a short circuit that caused the circuit breaker within the townhouse to trip. The homeowner, who was not at home at the time the circuit tripped, re-set the breaker. The minutes also state that the reason the circuit breaker within the townhouse did not trip after the homeowner re-set it was because the circuit was not properly grounded. The aforementioned minutes also reflect that "the

crimped wire by itself should not and would not have caused this problem if the line were properly grounded...both breakers, the one within the individual unit and the main one servicing all of the Townhouses functioned as they should have.”

7. The invoice from Kolb Electric, Inc., submitted to the Panel on December 20, 2006 in accordance with the Panel’s agreement to hold the record open until December 20, 2006, states that Kolb “found a circuit to be tripped that controls the bathroom and the living room lights; found a defective line in living room; and replaced the same. Reconnected circuit breaker. Found large fault in exterior light fixture. Fixture wires were pinched.” The Kolb invoice contained no references or recommendations as to GFI.
8. According to the minutes of the September 12, 2005 meeting of the Respondent Condominium’s Board of Directors Kolb Electric Inc.’s master electrician recommended that “all of the non-grounded outlets within the townhouse be replaced with grounded outlets or ground fault interruptor (GFI) outlets. Respondent’s property manager, Mr. Modesitt, testified that Kolb Electric told him that GFI should be installed on every circuit within the residence, not just the kitchen and bathroom, to prevent the kind of ground fault that created the fire behind the wall in the townhouse. Mr. Modesitt also testified that he consulted with other electricians on this issue.
9. Based on Kolb Electric, Inc.’s recommendation, the Condominium beginning on or about August 22, 2005, caused management and its engineering staff to check the outlets in all Condominium units to verify that all outlets in the units

were 3-prong outlets that were properly grounded and polarized and that GFI outlets were present in bathrooms and in kitchens. (Complainant's Exhibit 8).

10. At a Board of Directors meeting held on September 12, 2005, the Board of Directors voted affirmatively to mandate that all unit owners replace all outlets that were not grounded, or were not GFI in cases where they "were required" (kitchens and bathrooms), by March 31, 2006, using a licensed electrician, or the Condominium would enter the unit, replace any outlets not brought into compliance and bill the unit owner for the work.
11. The Condominium mailed a Notice to the Unit Owners on or about September 21, 2005, notifying the unit owners that the unit owners were required to upgrade, at the unit owner's expense, all two-prong outlets to three-prong grounded outlets and to install GFI outlets in all kitchen and bathrooms containing electrical outlets. (Complainant's Exhibit 10). The Condominium's mandate did not require unit owners to install GFI on every circuit within a unit as recommended by Kolb Electric, but only in the kitchen and bathrooms.
12. The Respondent Condominium's Board President, Ms. Susan Spring, testified that the Board of Directors believed that it was reasonably necessary to mandate the installation of GFI in kitchens and bathrooms by the unit owners in their individual units, and that the majority of unit owners who attended the September 12, 2005 Board meeting were upset and fearful of another fire occurring and voiced support for the Board's decision. Mr. Modesitt also testified that he believed it was necessary for the Condominium to mandate

the installation of GFI in kitchens and bathrooms to prevent fires from occurring in units and damaging other units and Condominium property. Both Ms. Spring and Mr. Modesitt testified that the cost of installing GFI's is minimal.

13. Complainant, who holds a master's degree in Electrical Engineering, via correspondence to the Condominium's Board of Directors dated August 17, 2005, September 6, 2005, September 7, 2005, November 4, 2005, and November 20, 2005, (Complainant's Exhibits 1, 3, 4, 5, 6) questioned whether ground fault interrupters would have prevented the fire in the townhouse and requested the Condominium's Board of Directors to advise him of which provision(s) in the Condominium's governing documents gave the Condominium the authority to require unit owners to modify their interior electrical wiring in accordance with the Board's September 21, 2005, directive. Complainant also requested the Condominium to consult a Professional Engineer to determine whether a GFI would have prevented the fire in the townhouse in order to validate the Condominium's mandating unit owners to install GFI's.
14. Respondent Condominium did not respond to Complainant's written request dated November 4, 2005, to advise him of which provision(s) in the Condominium's governing documents gave the Condominium the authority to mandate that unit owners modify their interior electrical wiring in accordance with the Board's directive as contained in the notice to Condominium unit owners, dated September 21, 2005, nor did Respondent respond to

Complainant's written request dated November 20, 2005, that the Condominium consult a professional engineer to determine whether a GFI would have prevented the fire in the townhouse before requiring the installations.

15. Respondent Condominium did respond to Complainant's correspondence dated August 17, 2005 in which the Condominium agreed with Complainant that neither GFI nor three-prong (or grounded) outlets have any bearing on power handling and/or distribution, and stating that misuse of a non-grounded outlet can result in a fire and/or overheating of the electrical lines in a unit and thus poses a risk to the safety of other unit owners. (Complainant's Exhibit 2).
16. Respondent Condominium did not hire a professional engineer to validate the recommendations made by Kolb Electric concerning installation of GFI in all condominium units. Mr. Modesitt testified that he felt it was not necessary to hire a professional engineer because the Condominium felt it had sufficient evidence to go forward, he had consulted with electricians, and hiring a professional engineer would cause the Condominium to incur thousands of dollars of expenses.
17. Complainant's unit is located in the "West Building", which was built in 1965.
18. The condominium units in the "West Building", including Complainant's unit, had three-prong outlets in each unit, but did not have GFIs in the kitchens and bathrooms. Complainant's unit has GFI in the bathrooms, but not in the kitchen.

19. The Complainant and Respondent do not dispute that the condominium units comprising The Whitehall Condominium are grandfathered by previous electrical code, and that previous electrical code did not require installation of GFI in kitchens, bathrooms, or elsewhere in the units.
20. The Complainant and the Respondent do not dispute the that current County electrical code requires GFI only in kitchens, bathrooms, garages, and outdoor areas, and that, absent substantial renovations being undertaken on a unit, the County electrical codes would not require Complainant or any similarly situated unit owner to upgrade the outlets and/or to install GFI.
21. The Complainant and the Respondent agree that GFI protects individuals in a unit against shock hazard and that shock hazard can be life threatening to an individual in a unit. Respondent Condominium's witness, electrician John Sherwood, testified that GFI is mainly for personal protection and to prevent electrocution. (Note: The Condominium did not bring to the hearing the electrician from Kolb Electric, Inc. referenced above to testify at this hearing).
22. Mr. Sherwood also testified that GFI can also help with a short circuit that would cause an arc at the receptacle or any appliance connected to a receptacle, and that an arc could potentially cause a fire. Mr. Sherwood testified that if an arc occurred because of a faulty toaster, having a GFI outlet would prevent that from turning into a fire. Mr. Sherwood also testified that, "if there was a possibility of, or if the scenario was that there was an arc and it did catch something on fire in that condominium or apartment, theoretically it could continue on into other condominiums." Mr. Modesitt also testified that

“electrical arcs can happen within appliances of any nature.” Mr. Sherwood also testified that the prime purpose of a circuit breaker is to help against a short circuit and that any motorized device can arc. Mr. Sherwood testified that he did not recommend putting GFI in every outlet in the house to prevent arcing.

23. Respondent’s Exhibits 3 & 4 (National Fire Protection Association News Release), states that “GFCI protection around the home has been a significant factor in reducing electric shock related fatalities,” and GFCI installation is required by the NEC for receptacles in kitchens, bathrooms, outdoor areas, basements and garages in new residential construction because of a history of shock hazards in these areas.” Respondent’s Exhibit 6 (Letter from Bansel & Associates, Inc.), states that “installation of GFI outlets is a life safety concern since it instantaneously interrupts electrical power as soon as an electrical short circuit is detected, thus saving and protecting lives.” Respondent Condominium also presented other statistics (Respondent’s Exhibit 5, U.S. Home Product Report – Appliances and Equipment Involved in Fires), but the Respondent’s witnesses did not in their testimony claim that the statistics established that GFI would have prevented the fires referenced in the statistics and/or that any of the referenced statistical fires were caused by arcs, rather than, for example faulty appliances and/or misuse of appliances.
24. Mr. Modesitt testified that the Condominium had to retrofit the common areas with electrical outlets, smoke detectors, and fire rated doors pursuant to the Condominium’s most recent insurance audit, but also testified that the

insurance auditors did not inspect the interiors of the units. Mr. Modesitt testified that he expected that if a fire were caused by an outlet that was not ground-faulted, it would affect the insurance rates of the Condominium Association. However, no evidence was presented by the Condominium that their insurance carrier ever indicated that not requiring installation of the GFI in individual units would affect the Condominium's insurance rates or cause the insurance to be cancelled.

CONCLUSIONS OF LAW

1. The Respondent cites Section 11-125(e) of the Maryland Condominium Act, "Right of entry to make repairs," as its authority to require the installation of GFI devices in every unit. This section states that **"The council of unit owners or its authorized designee shall have an irrevocable right and an easement to make repairs when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium."** This section must be read together with Sections 11-109(d) and 11-111 of the same Act, which grant condominium associations the right to adopt reasonable rules and regulations.
2. The standard of our review of a rule or regulation adopted by a condominium association is limited to a determination whether the rule is "reasonable, consistent with the law, and enacted in accordance with the bylaws," *Dulaney Towers Maintenance Corp. v. Obrey*, 46 Md. App. 464, 466 (1980); or as stated in *Kirkley v. Seipelt*, 212 Md. 127, 133 (1956), whether the decision is a "reasonable determination made in good faith, and not high-handed, whimsical or captious in manner."

3. There is no statute that requires the Complainant to install GFI's in his kitchen. Therefore, the issue here is whether the rule adopted by the Respondent has a reasonable basis, and we rule that the burden of proof in this regard falls on the Respondent to show that the mandatory installation of GFI's is reasonably necessary for public safety or to prevent damage to other portions of the Condominium.

4. The Condominium did not meet its burden of proof in this regard. The Panel believes that the Condominium Board of Directors acted with good intentions when it mandated that unit owners install GFIs in the kitchens. However, the Condominium fell short of establishing that requiring unit owners to install GFIs in their kitchens are reasonably necessary for public safety or to prevent damage to other areas of the Condominium. If the Condominium reasonably believed that GFIs were necessary to protect against arcs that could potentially cause fires that can spread to other units and/or common areas, the Panel questions why the Condominium only mandated their installation by unit owners in kitchens and bathrooms, since the Condominium admitted that arcs can occur within appliances of any nature (e.g., vacuum cleaners).

5. The testimony and evidence presented by the Condominium did not show that (1) the fire in the townhouse was caused by the lack of GFIs; or that (2) fires that could spread to other units/common areas would be prevented by the mandatory installation of GFIs in the kitchens (or elsewhere) within individual units, or (3) that the statistical data it presented concerned fires that were caused

by arcs occurring due to lack of GFIs. The evidence does clearly show that GFI prevents electrocution and shock hazard to individuals in a unit. However, the Panel does not believe that the Condominium's Board of Directors has the legal authority pursuant to the Act or its own Bylaws referenced below to mandate that unit owners install GFIs in their kitchens because GFIs protect individual unit owners inside their units from shock or electrocution resulting from misuse of appliances, as this purpose is not for the protection of public safety or to prevent damage to other portions of the Condominium as required by the Act.

6. The Condominium also claims that the Condominium's Bylaws, Article V, Section 13(b) provides a basis upon which it has the legal authority to mandate installation of GFI in units. That Bylaw provision provides that **“Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance for the Property applicable for residential use without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in his unit which will result in the cancellation of insurance on the Property... .”** The Condominium failed to meet its burden of proof by not putting forth evidence to show that a unit owners' failure to install GFIs in the kitchen or elsewhere would result in or had resulted in an increase in the Condominium's master insurance rates and/or cancellation of the Condominium's master insurance policy.

7. The Condominium did not cause to be performed a written report from a professional engineer (or other qualified professional) upon which to base its decision to require unit owners to install GFIs in their kitchens or bathrooms on

the grounds of public safety and/or prevention of damages to other portions of the Condominium. No written report prepared by a qualified professional exists stating that GFIs would act as a fire prevention measure to protect individuals in other units and/or damage to other portions of the Condominium, nor is there a written report prepared by a qualified professional demonstrating the connection between the townhouse fire and the role GFIs might have played, if any, in preventing such a fire. The Panel finds that the Condominium ignored the Complainant's legitimate requests for information in this regard during the Board's decision-making process. Complainant's requests for information and explanation should have been properly responded to and addressed by the Condominium during the Board's decision-making process.

8. The Condominium's Bylaws, Article V, Section 12(b) (1) provides that **“Except for portions of his unit required to be maintained, repaired, and replaced by the Association, each unit owner shall be responsible for the maintenance, repair, and replacement, at his own expense, of the following:...plumbing and electrical appliances and systems, fixtures and parts thereof which are wholly contained within his unit...”** Section 12 (c) provides that **“All repairs and replacements shall be substantially similar to the original construction and shall be of first class quality.”** This provision of the Bylaws requires unit owners to maintain, repair and replace electrical systems contained within their units. No evidence was presented to show that Complainant's (or other unit owners') kitchen outlet was in need of repair, replacement, or had not been maintained. The Condominium units are

grandfathered as to previous county electrical code standards, and an upgrade to current county electrical code is not required of grandfathered units by current electrical code. The Condominium, in mandating the GFIs, seeks to require a unit owner to upgrade existing outlets. Absent proof that such an upgrade is necessary on the grounds of public safety and/or preventing damage to other portions of the Condominium, the Condominium cannot legally require unit owners to replace existing kitchen outlets with GFI.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is

ORDERED:

1. That the Condominium shall cease and desist enforcement of its directive requiring unit owners to install GFIs in the kitchens and bathrooms of their individual units.
2. That if the Condominium desires to proceed with the installation of GFIs it shall inform each unit owner that installation of the GFIs in kitchens and bathrooms of the individual unit owners shall be voluntary, not mandatory, and the Condominium may recommend to the unit owners that GFIs be installed in the kitchens and bathrooms of the individual units. Each unit owner shall be informed in the same manner that he/she was informed of the Condominium's requirement that GFIs be installed.

3. The Condominium shall deliver a copy of this Memorandum Decision and Order to each unit owner within thirty (30) days from the effective date of this decision.
4. The Respondent shall pay to the Complainant the \$50.00 filing fee within thirty (30) days of the date of this Order.

Panel Members Richard Leeds, Vicki Vergagni and Corinne G. Rosen, Esq. all concurred in this Memorandum Decision and Order.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

Corinne G. Rosen, Esq., Panel Chair